

GURMAN, KURTIS, BLASK & FREEDMAN

CHARTERED

SUITE 500
1400 SIXTEENTH STREET, N.W.
WASHINGTON, D.C. 20036

(202) 328-8200
TELECOPIER: (202) 462-1784

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

December 16, 1994

HAND DELIVERED

William E. Kennard, Esquire
Office of General Counsel
Federal Communications Commission
1919 M Street, N.W., Room 614
Washington, D.C. 20554

Re: Request for Clarification of Commission's Rules and
Policies Regarding Payment of Balance of Winning
Bids for Broadband PCS Licenses
PP Docket No. 93-253

Dear Mr. Kennard:

We request modification of the Commission's requirements for payments of the balance of winning bids by successful bidders in the broadband Personal Communications Services ("PCS") auctions.^{1/} Section 1.2109 of the Commission's Rules requires that auction winners pay the balance of their winning bids in a lump sum within five (5) business days following award of the license. Because of the anticipated sums involved and the need that many winning bidders make capital calls upon groups of multiple outside investors, it is requested that the Commission either extend the time period for payment of the balance of bids or, in the alternative, provide advance notice of the issuance of the license, so that winning bidders will have at least thirty (30) days' notice of the date when payment is due.

The fundamental design criterion of the PCS bidding system is to promote competition among a diverse group of service providers

^{1/} The Commission has stated that, in order to facilitate a free flow of information between applicants and Commission staff, proceedings involving auction applicants are exempt from the ex parte prohibitions that generally pertain to restricted proceedings. See Public Notice, FCC 94-283, released November 7, 1994.

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List A B C D E

and to maintain safeguards against anticompetitive concentration.^{2/} Because of the enormous costs of purchasing a broadband PCS Major Trading Area ("MTA") license and developing a system,^{3/} all but the very largest companies will be required to turn to groups of outside investors for the necessary capital.^{4/} This dispersion of ownership and financial resources necessarily means that the smaller companies face a complex -- and thus time consuming -- task in converting the financial commitments of their investors into cash. These companies do not benefit from the efficiencies of drawing upon pre-existing lines of credit from traditional sources.^{5/} Simply put, five business days is insufficient time for a winning bidder to obtain liquid funds from a dispersed group of financial sources.

Furthermore, it would serve no public purpose to require the winning bidders to incur the costs of -- and risk the false starts resulting from -- trying to raise the liquid funds during the 30 day protest period following the filing of the Form 401 in anticipation of the possible grant of a license. It is impossible to predict whether a protest will be filed in any given case (generally, protests are filed at the end of the 30 day period) and thus whether or when the license will ultimately be granted. It is

^{2/} Second Report and Order, PP Docket No. 93-253, 9 FCC Rcd. 2348, 2349 paras. 4-5 (rel. April 20, 1994).

^{3/} By the Commission's own estimates (which in all likelihood are too low in light of the higher than anticipated prices established in the narrowband auctions), a successful bid for the New York MTA will be in excess of \$277 million, and for even the smallest MTA in the continental United States, Tulsa, will be in excess of \$11 million. See Second Report and Order, 9 FCC at 2379 para. 177. Actual aggregate costs for winning bids and construction and initial operation could be several multiples of these amounts.

^{4/} As shown by their Forms 175, more than one-third of the thirty applicants for the broadband PCS MTA auction who made an upfront payment are comprised of at least three other companies or individuals with a five percent or greater interest. One-half of these have five or more five percent owners. In one case, there are more than ten owners of a five percent or greater interest in the applicant's various classes of stock. The time requirements for raising capital will increase with the number of sources called upon.

^{5/} Making the payment for an MTA license will present complexities for even the largest companies, because they cannot be expected to have on hand that amount of cash, and any lending relationship will probably not involve a single financial institution but rather groups of participating lenders.

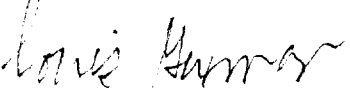
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also doubtful that many financial institutions and investors would agree to provide their funds prior to the grant of a license. Even in the event no protests are filed, it is impossible to predict just how soon after the expiration of the protest period the Commission will grant the license. Thus, winning bidders would be put in the position of trying to anticipate when -- and whether -- their license would be granted in an effort to beat the clock on producing the money. Under this system, qualified winning bidders could miss the payment deadline and be forced into a default, when all they needed was a few more days to draw upon their already established financial commitments. The result could be that expeditious award of licenses may be thwarted,^{6/} and the diversity of the group of service providers could be jeopardized.

In view of the foregoing, it is requested that the Commission implement a procedure so that a winning bidder would have no less than 30 days' notice of the date on which payment of the license would be required, which should be sufficient time to allow winning bidders to make capital calls upon their investors or draw down their loans with the knowledge that a license would be granted. The Commission could accomplish this objective in two ways. First, Section 1.2109 could be amended to provide that auction winners are required to pay the balance of the winning bids within thirty (30) days following award of the license. This extension of the payment period would in no way delay provision of PCS service to the public, and would avoid the disruptions of the defaults that inevitably would be caused by a payment period that currently is too short. In the alternative, the Commission could in each case, following the protest period (provided that no protests are filed) or the disposition of all protests, provide 30 days' notice prior to the grant of a license.

We respectfully request that the Commission make the foregoing clarifications and modifications to the payment rules and policies. Because the broadband PCS auction for the MTAs has already commenced, we request prompt action. Two copies of this letter are provided. Kindly make this letter part of the public record in the above-referenced docket.

Very truly yours,


Louis Gurman

cc: Rosalind K. Allen, Esquire
Donald H. Gips, Esquire
Jonathan V. Cohen, Esquire

^{6/} See Second Report and Order, 9 FCC Rcd. at 2349 para. 4.